IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 289 OF 2005

Narayan Velji Mor. ... Appellant.

Versus.

Municipal Corporation of Greater Mumbai. ... Respondent.

Shri Deepak Trivedi i/by Shri R.S.Ghadge for the Appellant.

Ms.Geeta Joglekar for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 25th April, 2005.

P.C.:

1. Admit. The Respondent waives service. The Appeal from Order is filed by the unsuccessful Plaintiff for challenging the impugned order dated 24th February 2005 by which ad-interim relief in favour of the Appellant is refused.

2. The challenge in the suit is to the notice dated 7th February 2005 issued by the Respondent-Corporation under section 55 of the Maharashtra Regional and Town Planning Act, 1966. The case made out in the trial Court is based on certain receipts relating to the year 1960 which show that the charges have been paid by the Appellant for unauthorised roof on a part of the terrace on the 5th floor of the building.

3. In this Appeal from Order IOD dated 18th July 1980

is placed on record. According to the Appellant/Plaintiff the plan which was sanctioned along with IOD shows existence of the suit structure.

4. The Respndent-Corporation has not filed any reply for opposing the grant of ad-interim relief. In the impugned order a statement of the Counsel appearing for the Respondent has been recorded that he was not in a position to produce earlier plain of the year 1981. Now there is a plan produced on record of this Court which is of the year 1980. As the notice is under section 55 of the said Act 1966, there are other issues involved in the matter including the issue of jurisdiction of the Civil Court. There is an ad-interim order passed by this Court which is operating till today. The Respondent-Corporation will have to deal with the IOD dated 18th July 1980 which is placed on record in this Court. The Respondent-Corporation will have to raise other legal and factual contentions by filing a reply.

5. Therefore, instead of keeping the Appeal pending the interest of justice will be served if the ad-interim order passed by this Court is continued till disposal of the Notice of Motion and hearing of the Notice of Motion is expedited.

6. Hence the following order is passed:

(i) Notice of Motion No.780 of 2005 shall be heard and decided by the learned trial Judge on or before 31st July 2005. Till disposal of the Notice of Motion ad-interim order passed by this Court on 3rd March 2005 will continue to operate.

(ii) Time is granted to the Respondent-Coproration to file reply to the Notice of Motion till 13th June 2005.

(iii) All contentions of the parties on merits of the Notice of Motion are kept expressly kept open.

(iv) Appeal from Order is disposed of in the above terms with no order as to costs.

(v) Parties and the trial Court to act on an authenticated copy of the order.

Judge.